

STATEMENT OF:

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**UNITED STATES HOUSE OF REPRESENTATIVES
COMMITTEE ON ENERGY AND COMMERCE
SUBCOMMITTEE ON TELECOMMUNICATIONS AND THE INTERNET**

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Good morning. Thank you, Chairman Upton, and members of the Committee for offering me the opportunity to speak with you today about the Committee's draft reform bill. My name is Jim Ellis, Senior Executive Vice President and General Counsel for SBC Communications Inc.

Two benefits of the bill stand out. *First*, the bill would establish a single, nationwide policy for the provision of broadband services, including VoIP. *Second*, the bill would tackle the issue of the extent to which cable franchise regulation, designed for the incumbent cable operators when they entered the market as monopolists, should apply to next-generation video services. By eliminating legacy franchise regulation for these broadband providers, the bill would create incentives for broadband investment, innovation and competition.

It is with respect to this critical issue of video competition where further illumination is particularly warranted. SBC is making massive investments to continue its transformation from a local phone company to a global provider of advanced network capabilities and innovative services. A critical part of that transformation is SBC's entry into the video services market. Over a powerful new upgrade to its broadband networks, SBC will begin offering a next-generation video service that relies on Internet Protocol or "IP" – the language of the Internet –

and that will compete directly with, and we believe outperform, existing cable services. In doing so, SBC will not only offer consumers something they do not have today – a truly potent alternative to the cable incumbents – but also greater access to the newest in broadband technologies and services.

Such an enterprise is not without substantial risk. Accordingly, any progressive legal regime should not impose on SBC and other new entrants legacy franchise rules designed for cable incumbents when they entered the market as monopolists. Doing so would utterly suffocate this much needed competition. Instead, the model should be cable's entry into the voice market using IP technology – known as "VoIP." There, cable faces none of the pervasive legacy regulation imposed on traditional voice service providers like SBC. As a result, cable VoIP is thriving and poised to become a mighty competitive force.

As we sit here, SBC engineers and construction crews are building a new addition to SBC's extensive broadband networks. We call this Project Lightspeed. It is a \$5 billion capital project that will drive 40,000 miles of additional fiber into SBC's networks and result in an advanced, broadband network that relies on IP technology. Over it, SBC will offer an integrated suite of voice, Internet access, data and video services. In just its initial phase, Project Lightspeed will extend to approximately 18 million households. This is the fastest and most aggressive deployment plan of its kind.

One of the next-generation products that SBC will offer is an interactive, two-way, IP-based video service that will be unlike – and better than – the cable services available today. SBC's

network will not, as cable systems do today, simply broadcast hundreds of channels to each customer's home for descrambling in a set-top box. Rather, SBC will give customers unprecedented control over the way they watch TV. This will mean three things to the consumer:

- *First, the ability to interact in real time with the system to control the viewing experience.*

Subscribers will, for instance, eventually be able to watch a baseball game from multiple camera angles or watch several games live on the same screen. Or, the customer will be able to pause live TV, skip to more detailed information about the product being advertised at that moment, and then pick up the program where she left off.

- *Second, integration of the video experience with other services.* Because the video service will communicate with other IP-based services, customers will be able to display on the TV secure, customized Internet content, such as real-time stock quotes or sports statistics, or display on the family's dedicated TV channel digital photos stored with SBC's Internet access service.

- *Third, control over the video service, not just with a remote control, but with other IP-based devices.* For example, Project Lightspeed will eventually allow a customer, while away from the house, to use a mobile phone to alter parental controls, or tell the system to record a favorite show.

In short, this is not plain-old-cable. It is a game-changing alternative to traditional cable service, and comes at a time when choice is much needed in the video marketplace.

More than twenty years after the Cable Act, and notwithstanding the introduction of Direct Broadcast Satellite or “DBS” service, the video distribution market has yet to witness transformative competition. Cable prices have been rising over three times as fast as the Consumer Price Index (“CPI”).^{1/} And that trend continues: 2005 has already seen another round of price hikes.^{2/}

It does not have to remain this way. In 2003, the GAO found that the rates of cable incumbents facing competition from a wire-based video provider are approximately 15 percent lower than in the absence of such competition.^{3/} A 2004 GAO report similarly found that the entry of a broadband service provider offering video service “induce[s] incumbent cable operators to

^{1/} U.S. General Accounting Office, *Report to the Chairman, Comm. on Commerce, Science, and Transportation, U.S. Senate: Telecommunications, Issues Related to Competition and Subscriber Rates in the Cable Television Industry*, at 20 (Oct. 2003), available at <http://frwebgate.access.gpo.gov/cgi-bin/useftp.cgi?IPaddress=162.140.64.21&filename=d048.pdf&directory=/diskb/wais/data/gao> (“2003 GAO Report”) (finding that cable rates have increased approximately 40 percent over a five-year period compared to the approximately 12 percent increase in the Consumer Price Index).

^{2/} See, e.g., Tony Gnoffo, *Dissecting Comcast’s Rate Hikes*, PHILADELPHIA INQUIRER, Mar. 13, 2005, available at 2005 WLNR 3875285 (discussing rate hike taking effect in March and noting “[f]or Comcast’s customers, rate increases have become an annual affair. Their regularity and steep trajectory — about 6 percent a year since 2001 — have been a sore point.”); *Charter to Increase Some Rates Starting Next Month*, KALAMAZOO GAZETTE, Feb. 11, 2005, available at <http://www.mlive.com/news/kzgazette/index.ssf?/base/news-12/1108138819196880.xml>; Greg Edwards, *Comcast Raising Cable Rates*, RICHMOND TIMES-DISPATCH, Dec. 7, 2004 (Comcast has announced rate increases for its Richmond customers ranging from 5.9% to 9.9% for standard analog service); Peter J. Howe, *Comcast Will Raise Cable Rates in January*, BOSTON GLOBE, Nov. 24, 2004; Carolyn Said, *Comcast to Raise Prices by 6 Percent Jan. 1*, SAN FRANCISCO CHRONICLE, Nov. 25, 2004; John Cook, *Comcast Plans to Raise Cable TV Rates*, SEATTLE POST INTELLIGENCER, Nov. 24, 2004.

^{3/} 2003 GAO Report at 3, 10. *Accord*, Video Choice Act of 2005, S. 1349, 109th Cong., 1st Sess. § 2(3) (2005) (citing GAO finding).

respond by providing more and better services and by reducing rates and offering special deals.”^{4/}

SBC’s Project Lightspeed is exactly the kind of wire-based competition that – according to the GAO and, frankly, common sense – will finally and truly challenge the chokehold that the incumbent cable operators have in this market.

But entering the video services market to take head-on an entrenched, incumbent cable operator is a risky and costly enterprise – even under the best of circumstances. It requires enormous investment, which SBC is making without the assurance of a single customer. It is critical, therefore, that laws and regulations designed to protect the incumbent cable provider do not so increase the risk and cost for new entrants that competition is stopped in its tracks. That is, SBC seeks for its IP-based video service the same treatment that the cable companies enjoy when rolling out IP-based voice services: Freedom from legacy regulation designed for incumbents.

As I mentioned, SBC is not building a cable system or offering traditional cable service; thus, it is not subject to the existing cable franchise regulations in the Act. Nonetheless, it is clear that the incumbent cable operators will seek to impede our entry by doing whatever they can to ensure that we face additional, city-by-city franchise requirements. If they are successful, this nascent video competition may well be snuffed out. SBC would, for instance, have to negotiate

^{4/} U.S. General Accounting Office, Report to the Subcomm. on Antitrust, Competition Policy, and Consumer Rights, Comm. on the Judiciary, U.S. Senate: Telecommunications, Wire-Based Competition Benefited Consumers in Selected Markets, at 12 (Feb. 2004); *see also id.* at 15 (finding that “the monthly rate for cable television service was 41 percent lower compared with the matched market, and in 2 other [broadband service provider] locations, cable rates were more than 30 percent lower when compared with their matched markets”).

some 2,000 separate franchise agreements – each of which would take an average of 12-18 months to obtain – in order just to complete its initial three-year deployment plan. And, the franchising obligations will differ from municipality to municipality, making it not only enormously expensive but also entirely impractical for SBC and other new entrants to build out region-wide networks. Having to meet these requirements will radically change the already challenging financial calculus in deploying these IP-based networks and services.

Lawmakers and other policymakers can best foster what promises to be unprecedented competition in the video market by taking steps to ensure that IP-based competitors, and indeed new entrants in general, are not saddled with unnecessary and nefarious legacy cable franchise regulations.

You are likely to hear claims that SBC wants to avoid cable franchise regulation so that it can serve just a select few customers. Don't believe this empty rhetoric. Our Project Lightspeed deployment, in just its initial phase, will reach millions of households in our territory – households that touch all different demographics. And, precisely because SBC is so serious about offering a robust alternative to cable, SBC is preparing to roll out an additional broadband video service called HomeZone. The service will for the first time integrate satellite video with powerful wire-based broadband capabilities. It will have many of the features of our IP-based video service and ultimately can be made available to every household in SBC's service territory that has access to our DSL service – that's some 80% of the households in our territory. SBC's goal is no less than to offer a broadband-based, next-generation alternative to cable across our territory.

Please make no mistake about: Video policy is broadband policy. The economics of deploying next generation broadband networks like Project Lightspeed rest heavily on the ability to capture video revenues. Therefore, Project Lightspeed is a broadband story, as it will enable greater bandwidths and a host of services, not just IP video, over a single platform. With the U.S. lagging behind other industrialized countries in broadband deployment, consumers and communities can only benefit from the type of network investment that will be made possible by robust video competition. The stakes simply could not be higher.

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